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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,018	03/31/2004	Jason Urbanski	8627-373 (PA-5270-CIP2)	5526
48003	7590	08/15/2008	EXAMINER	
BRINKS HOFER GILSON & LIONE/CHICAGO/COOK PO BOX 10395 CHICAGO, IL 60610			PHILOGENE, PEDRO	
			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			08/15/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-19,21,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (6,695,813) in view of Cathcart et al. (5,681,347) in view of Bai (4,619,643) in view of Hillstead (5,098,440).

With respect to claims 1, 21, Boyle et al., disclose a medical grasping device comprising: an elongate control member (18,520) having an atraumatic distal tip section, as best seen in FIG.1, and a proximal end portion; the elongate control member further including a grasping portion (14,16,530) proximal the distal tip section; an outer sheath (46,48) with a passageway therethrough, as best seen in FIG.2, surrounding the elongate control member and relatively movable with respect thereto.

Although Boyle et al teach of a control assembly, as set forth in column 24, lines 19-45, it is noted that Boyle et al., did not teach of a control assembly as claimed by applicant. However, in a similar art, Cathcart et al., evidences such a control assembly to enable the control deployment and displacement of a device.

Therefore, given the teaching of Cathcart et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the control assembly, as taught by Cathcart et al, in the device of Boyle et al., to urge the medical grasping device from a retracted to an expanded position.

Furthermore the prior art teaches of an elongated member, but is silent as to the material used to make the elongate control member. The claimed phrase “the elongate control member being formed for low elongation or is comprised of a low elongation material for low elongation or high elongation” is being treated as a product by process limitation. As set forth in the MPEP 2113, product by process claims are not limited to the manipulations of the recited steps, only to the structure implied by the steps. Thus, even though the prior art is silent as to the process used to make the elongate control member, it appears that the product in the prior art would be the same or similar as that claimed.

In addition, it is noted that the above combination of references did not teach of an elongate control member comprising a distal low elongation material section and a proximal high elongation material section bonded together; as claimed by applicant. However, in similar art, Bai, as best seen in FIG.20, provides the evidences of the use of an elongate member comprising a distal low elongation material section and a proximal high elongation material section to provide lateral support and avoid kinking or buckling.

Therefore, given the teaching of Bai, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/Cathcart , as taught by Bai, to provide lateral support and avoid kinking or buckling.

With respect to claims 3-7, 22, the above combination of references teaches all the limitations, the outer sheath being flexible and kink-resistant, as set forth in column 11, lines 42-67, column 12, lines 1-33, the atraumatic distal tip section tapers to a blunt

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and rounded tip; as best seen at the end of the control member 18, the control assembly including an actuation section that is grippable for reciprocal movement along the handle, as set forth in column 6, lines 3-25 of Cathcart et al., and a connecting block (25) as set forth in column 6, lines 3-25 of Cathcart et al. Tlow and high elongations ; asset forth in column 5, lines 34-68, column 8, lines 50-61.

With respect to claims 8-19, it is noted that the above combination of references teaches all the limitations, except for wire loops that are substantially circular upon full deployment, as claimed by applicant. However, in a similar art, Hillstead evidences the use of wire loops that are circular upon full deployment and having side sections that overlap and touch the vessel wall, the loops are capable of overlapping with adjacent ones and are capable of joining with the elongated control member and self deploy transversely upon emerging from the distal end, to engage the object to be retrieved with a greater force.

Therefore, given the teaching of Hillstead, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to incorporate the design of the grasping device of Hillstead in the grasping device of Boyle/Cathcart et al./Bai to engage the object to be retrieved with a greater force.

Claims 2, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (6,695,813) in view of Cathcart et al. (5,681,347) in view of Bai (4,619,643) in view of Hillstead (5,098,440) in view of Braunschweiler et al. (5,484,444).

Furthermore, it is noted that the above combination of references did not teach of an elongated control member that is a flexible cannula defining a lumen extending

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through into which a guide wire is receivable and movable with respect thereto; as claimed by applicant. However, in a similar art, Braunschweiler et al evidence the use of such an elongated member with cannula and guide wire to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/cathcart et al/Bai/Hillstead, as taught by Braunschweiler et al., to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

Response to Amendment

Applicant's arguments filed 5/12/08 have been fully considered but they are not persuasive. The examiner agrees with applicant that Trentacosta reference discloses a mixture of high and low elongation material. However, the reference to Bai provides the evidences of a catheter having an elongate member that utilizes a mix of high and low elongation materials to resist buckling. Therefore, the use of an elongate member having high and low elongation materials is old and well known in the art; as taught by Bai. This action is made final.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Pedro Philogene/
Primary Examiner, Art Unit 3733
August 13, 2008